

SENATE BILL 840
By Harper

AN ACT to amend Tennessee Code Annotated, Title 4; Title 8; Title 50 and Title 56, relative to genetic information nondiscrimination.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 7, is amended by deleting Part 27 in its entirety and by substituting instead the following:

Section 56-7-2701. As used in this part, unless otherwise specified or the context otherwise requires:

(1) "Commissioner" means the commissioner of commerce and insurance;

(2) "Family member" means, with respect to an individual, another individual related by blood to that individual;

(3) "Genetic information" means any individually identifiable result of a genetic test as defined by this section or explanation of such a result. For purposes of this part, the term "genetic information" shall not include any information about an identifiable person that is taken:

(A) As a biopsy, autopsy, or clinical specimen solely for the purpose of conducting an immediate clinical or diagnostic test, or information from a physical examination or chemical, blood or urine analysis, or any test that is performed for the purpose of detecting or diagnosing an existing disease process, or any test performed due to the

presence of symptoms of disease, illness or impairment that is not a test of DNA, RNA, mitochondrial DNA, chromosomes or proteins;

(B) As a blood sample solely for blood banking;

(C) As newborn screening required pursuant to title 68, chapter 5, part 4;

(D) As confidential research information for use in epidemiological and clinical research conducted for the purpose of generating scientific knowledge about genes or learning about genes or learning about genetic basis of disease or for developing pharmaceutical and other treatments of disease;

(E) As information in response to questions related to an actual disease, illness or impairment of an applicant or the applicant's family, so long as such questioning does not solicit or seek information pertaining to genetic tests or information;

(F) And used exclusively for paternity testing pursuant to Title 36; and

(G) As information pertaining to the abuse of drugs or alcohol which is derived from tests given for the exclusive purpose of determining the abuse of drugs or alcohol;

(4) "Genetic test" means a test of human DNA, RNA, mitochondrial DNA, chromosomes or proteins for the purpose of identifying genes, inherited or acquired genetic abnormalities, or the presence or absence of inherited or acquired characteristics in genetic material. For the purposes of this part, the term genetic test shall not include tests given for drugs, alcohol, cholesterol or

HIV; nor any test for the purpose of diagnosing or detecting an existing disease, illness, impairment or disorder;

(5) "Health Insurance provider" means any insurer or other entity providing health insurance coverage, including:

(A) A group health plan; or

(B) Any other health insurance arrangement, including any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organization subscriber contract.

(6) "Person" includes corporations, companies, associations, firms, partnerships, societies, and any other type of entity, as well as individuals.

Section 56-7-2702.

(a) A health insurance provider, as defined in this part, shall not:

(1) Cancel, refuse to issue or renew any health insurance coverage, or in any way make or permit any distinction or discrimination in the amount of premiums or rates charged, in the length of coverage, or in any other terms or conditions of any policy or coverage based upon genetic information as defined in this part, or on the basis that the individual or a family member has requested or received genetic services; or

(2) Solicit or require genetic tests or disclosure of any genetic information as a condition of the issuance or renewal of any policy or coverage that is covered by this part.

Section 56-7-2703.

(a) No insurer, agent, broker or person authorized to issue life, disability income, or long-term care policies in Tennessee shall:

(1) Practice unfair discrimination against a person because of the results of a genetic test or based upon genetic information. For purposes of this section, unfair discrimination means cancellation, refusing to issue or renew, charging any increased rate, restricting any length of coverage or in any way practicing discrimination against a person; or

(2) Require an applicant to undergo a genetic test as a condition of the issuance or renewal of such a policy.

(b)

(1) An insurer, agent, broker or person authorized to issue life, disability income, or long-term care policies in this state may ask on an application for such coverage whether or not the applicant has taken a genetic test as defined by this part. The application form must state that the applicant is not required to answer any questions concerning genetic testing or information. If an applicant provides genetic information, the insurer is authorized to use that information subject to the provisions of subsection (a) to set the terms of a policy provided that the information is reliable information relating to the insured's mortality or morbidity, based upon sound actuarial principles, or actual or reasonably anticipated claim experiences.

(2) If the commissioner has reason to believe that unfair discrimination as defined in this section has occurred, and that a proceeding by the commissioner would be in the interest of the public, the commissioner shall, in accordance with section 56-8-108, issue a statement of charges and notice of hearing. Upon a determination that the practice or act is inconsistent with this part, the commissioner may issue an order to cease and desist, may order payment of a

civil penalty pursuant to section 56-8-109, and may take any other action provided by law.

(3) Where a cease and desist order has been issued, the commissioner, in consultation with the commissioner of the department of health, shall hold a public hearing and may, by order, determine, based upon actuarial principles or actual or anticipated claim experience, that the genetic test which is the subject of such order provides no reliable information relating to the insured's morbidity or mortality and that its use would constitute unfair discrimination. At least annually, the commissioner shall review such order to assure that the determination remains current and shall amend, modify or rescind the order as needed. After a public hearing in consultation with the commissioner of the department of health, the commissioner may issue an advisory opinion on whether a genetic test provides no reliable information relating to an insured's morbidity or mortality, based upon sound actuarial principles or actual or reasonably anticipated claim experience.

Section 56-7-2704.

(a) A violation of this part shall constitute an unfair or deceptive act or practice pursuant to title 56, chapter 8, part 1, and is subject to any remedy or action provided by law.

(b)

(1) The commissioner of commerce and insurance shall enforce the requirements of this part, but shall have no jurisdiction over employee health benefit plans covered by the federal Employee Retirement Income Security Act of 1974 ("ERISA").

(2) The commissioner shall promulgate regulations pursuant to the Uniform Administrative Procedures Act, Title 4, Chapter 5, as may be necessary or appropriate to carry out this part.

(c)

(1) In addition to any other remedies that may be provided by law, a person may bring a civil action:

(A) To enjoin any act or practice that violates this part; and

(B) To obtain other appropriate relief to redress such violations, including monetary damages.

(2) The circuit and chancery courts have concurrent jurisdiction for an action under this act.

SECTION 2. Tennessee Code Annotated, Section 4-21-101(a)(3), is amended by inserting after the word "age" and before the words "or national origin" in the second line, the language ", genetic information, as defined in § 56-7-2701(3),".

SECTION 3. Tennessee Code Annotated, Section 4-21-102(3), is amended by inserting after the word "age" and before the words "or national origin" the language ", genetic information, as defined in § 56-7-2701(3),".

SECTION 4. Tennessee Code Annotated, Section 4-21-202(16)(A)(i), is amended by inserting after the word "age" the language ", genetic information as defined by § 56-7-2701(3),".

SECTION 5. Tennessee Code Annotated, Section 4-21-401(a)(1) and (2), are amended by inserting after the word "age" and before the words "or national origin" the language ", genetic information, as defined in § 56-7-2701(3),".

SECTION 6. Tennessee Code Annotated, Section 4-21-401(a), is further amended by deleting the word "or" after the language "national origin;" at the end of subitem (1); by deleting

the punctuation "." at the end of subitem (2) and by substituting instead the punctuation ";" and by adding the following appropriately designated subdivisions:

(3) Collect, solicit or require disclosure of genetic information from any person as a condition of employment;

(4) Solicit submission to, require, or administer a genetic test, as defined by § 56-7-2701(4), to any person as a condition of employment;

(5) Offer a person an inducement to undergo a genetic test or otherwise disclose genetic information; or

(6) Question a person about his or her genetic information or that of his or her family members, or inquire about previous genetic testing.

SECTION 7. Tennessee Code Annotated, Sections 4-21-402(1) and (2), are amended by inserting after the word "age" and before the words "national origin" the language " , genetic information, as defined by § 56-7-2701(3),".

SECTION 8. Tennessee Code Annotated, Section 4-21-402, is further amended by deleting the word "or" after the words and punctuation " national origin" at the end of subitem (2); and by adding the following as appropriately numbered subdivisions immediately preceding the last subdivision and by appropriately renumbering the last subdivision:

(3) Collect, solicit, or require disclosure of genetic information from any person as a condition of membership;

(4) Solicit submission to, require, or administer a genetic test to any person as a condition of membership;

(5) Offer a person an inducement to undergo a genetic test or otherwise disclose genetic information;

(6) Question a person about his or her genetic information or that of his or her family members, or inquire about previous genetic testing; or

SECTION 9. Tennessee Code Annotated, Section 4-21-403, is amended by inserting after the word "age" and before the words "or national origin" the language ", genetic information, as defined by § 56-7-2701(3),".

SECTION 10. Tennessee Code Annotated, Sections 4-21-404(1) and (2), are amended by inserting after the language "color," and before the word "religion" the language ", genetic information, as defined by § 56-7-2701(3),".

SECTION 11. Tennessee Code Annotated, Section 8-30-221, is amended in the fourth sentence by inserting after the language "race" the language ", genetic information, as defined in § 56-7-2701(3),".

SECTION 12. Tennessee Code Annotated, Section 8-30-326(a), is amended by inserting after the language "age," the language ", genetic information, as defined in § 56-7-2701(3),".

SECTION 13. Tennessee Code Annotated, Section 8-30-333(b), is amended by inserting after the language "color," the language ", genetic information, as defined in § 56-7-2701(3),".

SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 15. This act shall take effect July 1, 2005, the public welfare requiring it.